IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Government Appeal No. 1176 of 2001
(Old No- 637/83)

State
Versus
Keshar Singh

Date of decision :- 02-08-2005

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- August 2, 2005 Initial of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

GOVERNMENT APPEAL NO.1176 of 2001 –new

(Old number 637 of 1983)

State of U.P. (Now State of Uttaranchal)
..... Appellant

Versus

Keshar Singh sonof Jatram
R/o village Phitari Patti Panchgal
District Uttarkashi ..... Respondent

Hon'ble J.C.S. Rawat, J.

1. This is a Criminal Appeal preferred by the State against the Judgment and order dated 13.12.1983 passed by the Sessions Judge, Uttarkashi in criminal appeal no.19 of 1982 Kesar Singh Vs. State by which he allowed the appeal and set aside the conviction and district Uttarkashi in criminal caseno.374 of 1980 by which the learned Magistrate convicted and sentenced the accused respondent under section 51 of Wild Life (Protection) Act, 1972 to undergo imprisonment for two years ad a fined of Rs.2000/- and default of payment of fine to further undergo 3 months S.I.

2. The brief facts are that a complaint was filed before the trial court alleging therein that on 24.11.1980 at 7 a.m. from motor road in village Natwar four pods of musk weighing 10 tolas 5 Anas worth Rs.12, 000/- was recovered from the possession of the respondent in his statement u/s 313 Cr.P.C. denied the allegations made in the complaint and stated that he

was taken into illegal custody and thereafter he was handed over to the police. He has made a complaint to

the higher authorities and he has been implicated due to enmity. After appreciation of the evidence the learned trial court convicted the respondent and sentenced him as mentioned above. Feeling aggrieved by the said order an appeal was preferred before the learned Sessions Judge who allowed the appeal and acquitted the respondent. The learned Sessions Judge acquitted the respondent-accused only on the ground that Assistant Wild Life Warder was not competent to file the complaint. As such the complaint was not made in accordance with law and the trial court was not competent to take the cognizance and acquitted the respondent-accused on this ground alone.

3. I have heard Sri D.K.Sharma learned G.A. and learned counsel for the respondent and perused the record.

4. It was contended on behalf of the State that section 5 of the Wild Life (Protection) Act, 1972 empowers all the Assistant Wild Life Wardens to file complaints against offences under the said Act in the competent courts. It was further contended that notification no.4003/XIV-3-67-74 dated April 30, 1976 empowers all the Assistant Wild Life Wardens to prosecute the offenders. The learned counsel for the respondent conceded this fact. Section 55 of the Wild Life (Protection) Act, 1972 is under:-

" Cognizance of offences:- No Court shall take cognizance of any offence against the Act on the complaint of any person other than___

(a) Director of Wild Life Preservation or any other officer authorized in this behalf by the Central Government; or

(b) The Chief Wild Life Warden, or any other officer authorized in this behalf by the State Government; or

(c) Any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the State Government or the officer authorized as aforesaid."

5. The perusal of the aforesaid section reveals that the Chief Wild Life Warden or any other officer authorized in this behalf by the State Government may file complaints before the competent court.The notification no.4003/XIV-3-67-74 dated April 30, 1976 is as under:-

"In exercise of the powers under section 55 of the Wild Life (Protection) Act, 1972,(Act no.53 of 1972), the Governor is pleased to authorize all the Assistant Conservators of Forests, al the Assistant Wild Life Wardens, all the Range Officers al the Deputy Superintendents of Police, all the Sub-Inspectors of Police posted to any of the police stations and/or Police out posts, and Deputy Chief Wild Life Warden to file, in their respective jurisdictions complaints against offences under the said Act."

6. The perusal of the above notification reveals that the Assistant Wild Life Warden is competent to file the complaint before the competent court. The notification was issued in the year 1976 whereas the appeal was decided on 13.12.1982. As such when the appeal was decided and the prosecution was launched the Assistant Wild Life Warden was empowered to file the complaint. As such the appellate court erred in holding that the Assistant Wild Life Warden was not competent to file the complaint. The learned appellant court has not dealt with other points raised before it.

7. In view of the above discussion the appeal deserves to be remanded back to the learned Sessions Judge and he is directed to decide the appeal afresh in

accordance with law after hearing both the parties. The parties are directed to appear before the learned Sessions Judge on 15.9.2005. The record of the court below be returned back alongwith a copy of this judgment immediately.

(J.C.S.RAWAT J)

Dated: August 2, 2005
MPS